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SENATE....No. 100.

Commonwealth of Massachusetts.

IN SENATE, March 25, 1857.

The Joint Special Committee of the House and Senate, to whom was referred the Petition of Levi Baker, of Yarmouth, and the Petition of 100 citizens of Yarmouth in aid of the same, asking an appropriation by the Legislature, to enable him to contest in the Courts of the United States the unconstitutional seizure and confiscation of his vessel by the public authorities of the State of Virginia, have considered the same, and

REPORT:

The seizure and confiscation of the vessel of the petitioner, is one of a class of measures resorted to in late years by several of the slaveholding States, which, under the name of "Acts for the protection of slave property," are means of retaliation upon the non-slaveholding States, for the discussion of the question of Slavery. These unjust and unconstitutional laws are levelled both at the property and the citizens of the free States: at their property, as in the case of Captain Baker, and at their citizens, in the imprisonment of colored seamen who visit the ports of Louisiana, Alabama and South Carolina, and,

in some instances, of their sale into slavery for non-payment of the jail fees, incurred by their unjust and illegal imprisonment. The present is, however, the first case with which the Committee are acquainted, where any considerable amount of property of free State citizens has been confiscated under these laws. As a question of a commercial nature merely, it is of great importance to Massachusetts, involving, as it does, a vast annual and unconstitutional tax on all northern coasting vessels visiting the waters of Virginia, and a frequent liability to confiscation. As a question involving a great principle of constitutional right, it is of still greater moment.

Your Committee, therefore, ask the earnest attention of every member of the legislature to the following facts, and the conclusions to which we have arrived:—

On the 17th day of March, 1856, the legislature of Virginia passed a law, entitled, “An Act providing additional protection for the slave property of citizens,” the first, second, fourth, fifth, eighth and sixteenth sections of which, (which are all that are material to this case,) are as follows:—

“SECT. 1. Be it enacted by the general assembly, that it shall not be lawful for any vessel, of any size or description whatever, owned in whole or in part by any citizen or resident of another State, and about to sail or steam to any port or place north of and beyond the Capes of Virginia, to depart from the waters of this Commonwealth, until said vessel has undergone the inspection hereinafter provided for in this Act, and received a certificate to that effect.

“If any such vessel shall depart from this State without such certificate of inspection, the captain or owner thereof shall forfeit and pay the sum of five hundred dollars, to be recovered by any person who will sue for the same in any court of record in this State, in the name of the governor of this Commonwealth. Pending said suit, the vessel of such captain or owner shall not leave the State, until bond be given by the captain or owner, or other person for him, payable to the governor, with two or more sureties satisfactory to the court, in the penalty of one thousand dollars, for the payment of the forfeit or fine, together with the costs and expenses incurred in enforcing the same; and in default of such bond, the vessel shall be held

liable: *provided*, that nothing contained in this section shall apply to vessels belonging to the United States government, or vessels American or foreign, bound direct to any foreign country, other than the British North American Colonies.

“SECT. 2. The pilots, licensed under the laws of Virginia, and while attached to a vessel regularly employed as a pilot boat, are hereby constituted and appointed inspectors to execute this Act, so far as the same may be applicable to the Chesapeake Bay, and the waters tributary thereto, within the jurisdiction of this State, together with such other inspectors as may be appointed by virtue of this Act.”

“SECT. 4. It shall be the duty of the inspector, or other person authorized to act under this law, to examine and search all vessels herein before described, to see that no slave, or person held to service or labor in this State, or person charged with the commission of any crime within the State, shall be concealed on board said vessel: such inspection shall be made within twelve hours of the time of departure of such vessel from the waters of Virginia, and may be made in any bay, river, creek, or other water-course of the State: *provided, however*, that steamers plying as regular packets between ports in Virginia, and those north of and outside of the Capes of Virginia, shall be inspected at the port of departure nearest to Old Point Comfort.

“SECT. 5. A vessel so inspected, and getting under weigh with intent to leave the waters of the State, if she returns to an anchorage above Bache River Point, or within Old Point Comfort, shall be again inspected, and charged as if an original case. If such vessel be driven back by stress of weather to seek a harbor, she shall be exempt from payment of a second fee, unless she holds intercourse with the shore.”

“SECT. 8. For every inspection of a vessel under this law, the inspector or other officer shall be entitled to demand and receive the sum of five dollars; for the payment of which, such vessel shall be liable, and the inspector or other officer may seize and hold her till the same is paid, together with all charges incurred in taking care of the vessel, as well as in enforcing the payment of the same: *provided*, that steam packets trading regularly between the waters of Virginia, and ports north of and beyond the Capes of Virginia, shall pay not more than

five dollars for each inspection, under the provisions of this Act: *provided, however*, that for every inspection of a vessel engaged in the coal trade, the inspector shall not receive a greater sum than two dollars."

"SECT. 16. All fines and forfeitures imposed by this Act, and not otherwise specially provided for, shall go, one-half to the informer, and the other to be paid into the treasury of the State; to constitute a fund, to be called 'The Fugitive Slave Fund,' and to be used for the payment of rewards awarded by the governor for the apprehension of runaway slaves, and to pay other expenses, incident to the execution of this law, together with such other purposes as may hereafter be determined on by the general assembly."

The chief points in the above sections of this law, which call for attention in this case, are the following:—

First. Vessels only which are bound *north* of the Capes of Virginia, are required to be inspected, and pay the tax of five dollars for such inspection.

Second. It does not apply to vessels owned in Virginia, but they are exempt from such inspection.

Third. Every vessel "departing" from the waters of Virginia without a certificate of inspection, shall forfeit five hundred dollars; and during the suit for this penalty, bond must be given for its payment and costs; and if said bond is not given, the vessel is forfeited.

Fourth. The pilots of the State are the inspectors who are to search the vessel and give the certificate.

Fifth. If a vessel returns to the "waters of the State" from any cause, she must pay the inspection fee again before departing, except when compelled to return by stress of weather; in which case also it must be paid if there is any intercourse with the shore.

Sixth. The fines levied under this law are appropriated to the enforcement of the fugitive slave law.

A law of this kind, if passed by a State having full power to legislate on commerce, and applying only to its own citizens, would justly excite indignation. Yet this enactment is made by a State of the Union, under whose Federal Constitution and judicial interpretations of federal powers, "Congress alone

has power to regulate commerce among the several States," and which has always claimed exclusive control over both foreign and coastwise commerce, leaving to the States, only the power to pass such laws as relate to quarantine, health, police, and perhaps a few other minor local and municipal regulations.

The petitioner, Captain Levi Baker, has been engaged in the Virginia coasting trade twenty-five years. He arrived at Norfolk, Virginia, in his schooner, the *N. C. Hall*, of which he was master and part owner, on the 29th of July last, and having taken on board a cargo of corn and fruit for New Bedford, sailed from Norfolk on the afternoon of August 4, and anchored at Hampton Bar, a dozen miles from Norfolk, on his way to sea, for the purpose of taking in more fruit on deck. The pilot boat hailed him at anchor, and inquired "where he was bound," but no one came on board to search the vessel. The pilots, by the law, are the inspectors, and it is at this place, and outside, that they search vessels under the Act. During the night, the wind becoming fair, Captain Baker abandoned his intention of getting fruit at Hampton, weighed anchor, and stood to sea. He knew he could not clear the capes of Virginia before morning, and expected some of the pilot boats, always cruising there, would board and search him, as was their custom, but they did not even hail him on his way out, nor was any pilot visible. His cargo of fruit was perishable, and he could not return to be inspected, without loss, and therefore he proceeded to sea.

No person was concealed or unlawfully on board, and no passengers, except two citizens of Norfolk, going to New Bedford.

The vessel returned to the port of Norfolk, on the 4th of September last, under charge of another master, for that trip, Captain Baker being necessarily detained at home. She was seized at Norfolk, before reaching the wharf, by the pilots, for having departed as above stated, on the 4th of August, without search, and was chained to the docks of Norfolk, in charge of the officers of the State. Captain Baker, immediately on being advised of the seizure of his vessel, repaired to Norfolk to obtain her release.

He was at first inclined to pay the fine, which, with costs, then reached \$700, in order to release his vessel, as she was not coppered, and would become nearly worthless in a few weeks in that port, from the ravages of the worms, and he could not

afford to lose her. But eminent counsel, and many merchants, advised him that the law was unconstitutional and unjust, and he accordingly went with the sureties provided by the first section of the Act, to the clerk of the Circuit Court, to the agent of the inspectors, to various notaries public, and all the public officers in any way connected with the courts to be found, in order to give the bonds, and release his vessel.

But none of these officers, though they were satisfied with the sureties offered, would take any steps to release her, on the ground, as your Committee understand, that only the Circuit Court in session had power to take the bond.

The court was not to sit until the latter part of November, a period of two and a half months, before which time his vessel could not be released. He then, with about twenty of the merchants and citizens of Norfolk, petitioned governor Wise to release the vessel, setting forth the circumstances of the case. The petition was unsuccessful.

After spending many weeks at Norfolk, and expending \$500 in the expenses of himself and vessel, and unwilling to submit to a fine and costs of \$700, which he was advised was in violation of the Constitution of the United States, and feeling further, that he stood in some sense as the representative of the coasting interest of his State, in resisting the law, he on the 15th of November, abandoned further efforts to save his vessel, and returned home.

The Circuit Court of Virginia condemned her, and she was sold for \$750 in December. Her value at the time of her seizure was \$3,000, being a good vessel, but seven years old—Massachusetts built, of white oak and copper fastened. The worms had nearly destroyed her, during her detention, and reduced her value to the above amount.

To show the partiality with which this law is executed, and that it was intended to operate against the commerce of the Free States, we cite a case in evidence before us. In September last, a vessel coming out of the James River was seized for some alleged violation of the Act and detained two or three days. It was then discovered that she was partly owned in Norfolk, and she was forthwith released. Whether on the ground that only vessels owned in other States are intended by the Act, or from sympathy with their own citizens, the Com-

mittee are unable to state. This case was exactly parallel with the one before us.

The process of searching a vessel under this Act, is a mere matter of form,—expensive and annoying to the vessels, and useless even for the purposes intended by the Act itself. The petitioner was searched last April, under the Act. The pilot-boat hailed him and a pilot came on board. He stated to Capt. Baker that he “wanted five dollars, the fee allowed by law for searching him.”

He made no examination whatever of the vessel. The hatches were not taken off. He merely signed his name to a receipt for the five dollars paid him, and returned to his boat. The testimony of other captains before us who have sailed in this trade, is to the same effect, and they all declare that the pilots who are obliged to execute the law under a penalty for omission, condemn it in the strongest terms, and pronounce it “outrageous.” The same is the feeling existing among the merchants and legal profession, in Norfolk. Even they, desired to have the law tested, and joined in the petition to Gov. Wise for the release of the vessel. The governor himself is said to have remarked that the “law was lame.” All the commercial men united in pronouncing it unjust, oppressive, and unconstitutional.

Letters are in the possession of the Committee from eminent counsel in Virginia, advising the prosecution of the case in the United States courts, as unconstitutional, and expressing a belief that even the Virginia Court of Appeals, would declare the law invalid.

Your Committee call the attention of the legislature particularly to the following facts, showing the enormous tribute levied upon the commerce of this State and of the North, under this law: an amount so great that it must have called out remonstrance before, but for its hitherto having been levied in the small sums as the fee, five dollars, and not in the more noticeable and striking amounts of \$500 fines; or, as in this case actual confiscation.

The town of Wellfleet, it is shown to us, sends to the “waters of Virginia” forty vessels in winter and eighty in spring, chiefly employed in the oyster trade. These vessels make six trips in the year, as an average. On “departing” from these waters they invariably pay once each trip, five dollars, the price

of the search for fugitive slaves. The amount therefore levied in one year upon the commercial industry of the little town of Wellfleet, is \$2,080—about one dollar per head for every inhabitant of Wellfleet. This is exclusive of the fees paid the second time in very many instances, when the vessels put back and are compelled to submit to another, and even a third payment, besides the time lost in submitting to the search. Forty or fifty vessels sail from Boston to Virginia as regular traders, and between one and two hundred sail in the same trade from New York.

From the best estimate by a number of captains of vessels in the trade, examined before us, and inquiries of others, not less than seventy-five vessels bound north, sail from the waters of Virginia daily, bound to northern ports, which pay this unjust tribute—amounting in one year to nearly \$137,000.

This is believed to be a moderate estimate. All the commerce in the waters of Virginia—from the fact that all the navigable rivers of that State, and also the waters of the great Chesapeake Bay, reach the ocean by a passage ten or fifteen miles in width between Cape Charles and Cape Henry—must reach the sea by this passage, and the pilot boats guarding this narrow outlet, suffer none to escape.

The Maryland and Baltimore trade finds the sea by this route, and as Virginia owns the south part of the Chesapeake Bay, is liable to, and pays this tax which must be levied, in the language of the Act, on any vessel “departing from any of the waters of this Commonwealth”—Virginia.

Such are the facts. That this vast assessment upon northern commerce has hitherto called out no remonstrance, is explained, perhaps, from the fact that the law is hardly a year in operation, and that owners prefer to submit to a small exaction, though annoying and illegal, than incur the heavy expenses of a resistance by a legal defence of their rights. That it will be resisted, and eventually lead to collision and violence unless repealed, your Committee have reason to believe.

An eminent merchant of this city, whose vessels occasionally put into the Hampton Roads for shelter, and one of which paid the fee on her departure, forthwith gave orders to his captains hereafter to bring away the inspectors who should board

them, with a view to prosecute them on a charge of piracy before the United States courts.

Your Committee do not wish to offer any argument here to prove what they believe to be the utter unconstitutionality of this law, under the Constitution of the United States. Such an argument would be out of place in a report, and a mere reference to that instrument, aside from the decisions under it, would seem sufficient to settle the question. A citation of the provisions of the Constitution, and a reference to a few leading decisions, will be, perhaps, an appropriate conclusion of this report.

The Constitution of the United States, article 1, section 8, which prescribes the powers vested in congress, declares that congress shall have power "To regulate commerce *among the several States*, and with the Indian tribes."

It is a matter of history, that the necessity of a uniform system of commercial regulations, in other words, of a power "to regulate commerce among the States," was the first and most important cause which led to the adoption of the Federal Constitution.

Before its adoption the States were sovereign and independent, subject only to the limitations of the articles of Confederation, which the Constitution superseded. No regulation of commerce existed in those articles, except the provision that "no State shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in congress assembled." The insufficiency of these provisions, to control the commerce of thirteen independent States, with various laws, many of them conflicting, led to the proposition from Virginia first, and other States afterwards, for a convention from which resulted eventually the Federal Constitution. The debates in that convention, and in those of the states on the adoption of that instrument, show that whatever might have been the views prevailing as to the expediency of vesting exclusive power in congress in other matters, but one opinion existed as to giving it supreme and exclusive control of commerce. It was an opinion derived from the bitter experience of the Confederation. Exclusive power, therefore, was vested in congress, to regulate and control this great interest, and as a consequence, no *State* could make laws affecting

it. Such has been the received and settled opinion ever since, confirmed by the solemn and repeated decisions of the United States Supreme Court.

The first leading case in which the question of the exclusive existence of this power in congress, and the consequent inability of a State to exercise it arose, was that of *Gibbons vs. Ogden*, in New York, in 1824, reported in the 9 Wheaton's U. S. Reports, 196. The State Legislature of New York had granted to certain parties the exclusive right to run vessels propelled by steam, upon the waters of the State of New York for twenty years. This monopoly was contested by the ship owners of New Jersey, and at last was carried to the Supreme Court of the United States.

The question was, whether the State of New York could pass laws affecting commerce, under the Constitution of the United States; and it was decided that the power was vested *exclusively in congress*; that no State could exercise it, and that consequently all State laws affecting foreign commerce, or *that among the States*, was unconstitutional and void. The court say: "The Constitution gives the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution itself. The power over commerce with foreign nations, and among the several States, is vested in congress as absolutely as it would be in a single government. having in its Constitutions the same restrictions. When a State proceeds to regulate commerce with foreign nations, or among the several States, it is exercising the very power that is granted to congress, and is doing the very thing that congress is authorized to do; the power to regulate commerce is necessarily exclusive." Such is the language of the court.

The doctrine thus declared, has always been recognized and adopted by the Supreme Court in many decisions since, and is the settled law of the land.

Passing over the many various intervening decisions since, we refer only to the case of *Smith vs. Turner*, (7 Howard's U. S. Reports, 384,) decided in the United States Supreme Court, in 1849. In this case, the State of New York had passed

a law levying the sum of one dollar upon each steerage passenger arriving from any foreign port, at the port of New York.

Its payment was resisted, on the ground that the law was in violation of the Constitution of the United States, as a regulation of commerce, and the case was carried to the United States Supreme Court. That tribunal, after a most lengthy and careful review of all the authorities, and an examination anew of the commercial power of congress, decided: that the New York law was unconstitutional and void; that the power to regulate commerce among the States, &c., prescribed in the Constitution, vested exclusively in congress, and that the States had no power whatever over such commerce: that the powers of the States could only extend to health, and quarantine laws, purely *internal* commerce, police regulations, roads, ferries and bridges, and kindred subjects of local and municipal regulations: beyond these they could not go; they had no power over commerce carried on beyond the State borders, or on the high seas. And even in the matters of an internal and police nature, if the State regulations conflicted with the laws of congress, the latter must be supreme, and the former void.

The language of Justice McLean on this point is: "I am brought to the conclusion that the power to regulate commerce with foreign nations, and among the several States, by the Constitution, is *vested exclusively in congress*."

That the case before us is perfectly parallel in principle with these cited, the Committee can have no doubt.

The trade in which this vessel was engaged between Virginia and Massachusetts, was "commerce among the States," which congress alone had power to regulate. The establishment by Virginia, of a system of search of vessels engaged in such commerce; the appointment of a board of officers with extraordinary powers; the detention of vessels on the high seas; and the imposition of a tax on them, with confiscation for non-payment, were all of them measures of "regulation" of commerce among the States, of the most important character. If Virginia could impose legally a small tax upon commerce, she could legally impose a large one. She could impose a tax on vessels, which would utterly prohibit and exclude them from her ports, and thereby secure the whole coasting trade to her own citizens. If Virginia possessed this power, other States also would possess

it. They could pass retaliatory laws. The consequences it is unnecessary to state. The Union, in such a conflict of hostile commercial regulations of States, could not exist an hour.

This law of Virginia is also in violation of another provision of the Constitution, contained in section 8, of article 1. "Congress shall have power to levy and collect taxes, duties, imposts and excises, &c.; but all taxes, duties, imposts and excises, shall be uniform throughout the United States." An impost is a tax or tribute, levied by authority. The power to "levy and collect taxes, duties and imposts, in order to pay the debt, and provide for the common defence and general welfare of the United States," in its very terms, shows that it cannot be a State power. No one State is or can be capable of providing for the common defence and general welfare of the whole United States.

So vast a power, would, of course, never be conferred upon any single State.

It remains then exclusively in congress, and the further provision, that all these taxes and duties shall be *uniform* throughout the United States, is equally conclusive, to show that in the general government only, and not in the States, the power resides to levy these duties and taxes. If States could levy these taxes on commerce, Virginia could levy one rate or one kind of tax, and Massachusetts could levy another rate or kind.

There could then be no *uniformity*, and the provision of the Constitution, that all "duties, imposts and excises, shall be *uniform* throughout the United States," would be defeated. This constitutional uniformity of taxation is expressly enjoined in regard to these duties and imposts, and is obligatory upon even congress itself, when it exercises the power of taxation.

There is a provision, as follows, in the 10th section of article 1, which may seem to confer this power on a State, and it is doubtless the one on which this Act is founded. It is found in an *exception* to the powers prohibited to the States: "No State shall, without the consent of congress, levy any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United

States; and all such laws shall be subject to the revision and control of congress."

The fee under the Virginia law was an *impost* levied upon a vessel. A vessel is not an import, or an export, and if we even admit, by a strained construction, that it is, even then the duty *cannot be laid without the consent of congress*. And after the consent of congress is obtained, it can only be levied when *absolutely necessary for executing the inspection laws* of the State.

"Inspection" laws apply to exports, in their true sense, and have no relation to searches and seizures of vessels, for any cause.

The name "inspectors," used in the Virginia Act, was probably placed there to mislead, and convey the idea that it was an "inspection" law under the Constitution.

In another respect, this law is a direct violation of the national Constitution.

In the 9th section of the 1st article, among the powers prohibited to congress itself, as well as to States, it is provided, that "No preference shall be given by any regulation of commerce or revenue, to the ports of one State over those of another; nor shall vessels bound to or from one State, be obliged to enter, clear, or pay duties in another."

If congress cannot exercise these powers of commerce, of preference in favor of one State, as against another, how shall a State do it? How shall Virginia prefer Southern States against Northern, or exempt her own vessels, and tax those of Massachusetts? Yet the Act opens in its very first section, by applying its provisions to vessels "owned in whole or in part by citizens of another State," thus by implication, exempting Virginia from the operation of the Act.

Its next provision is equally objectionable. It applies to sail or steam vessels bound to any port or place *north* of the Capes of Virginia. Vessels of any kind or description may go to all ports of the Atlantic coast, or Gulf of Mexico *South*, and depart freely, and no tax or tribute is levied. There are eight seaboard States *South* of the Capes of Virginia, whose vessels may visit Virginia without being subject to this tax. There are *ten* seaboard States *North* of these Capes, owning a vast commerce, whose vessels visit Virginia by thousands annually, which never escape this tax, but pay therefor the aggregate

sum annually of \$137,000. Such is the operation of this law in this respect.

Again: by the Constitution, "Vessels bound to or from one State, shall not be obliged to enter, clear, or pay duties in another." The Virginia Act applies to all vessels bound north, and about to depart from the "waters of Virginia." The whole south part of Chesapeake Bay,—into which flow six navigable rivers,—and its entrance, are owned or claimed by Virginia. The State of Maryland lies wholly on the north side of this Bay, together with the port of Baltimore, and we believe every sea port in that State, of any consequence whatever, lies on this Bay or its rivers. Every vessel visiting Baltimore in Maryland from the North—and the number is immense—must pass through the "waters of Virginia" to reach the sea. They are all therefore subject to pay this tribute. The Virginia pilot boats, hovering across the narrow entrance of the Chesapeake, as the Algerine corsairs used to watch the Mediterranean Straits, pounce upon their prey and levy tribute on honest commerce, as unlawfully as did those freebooters of the seas.

Further: On the matter of unconstitutionality, we believe that this law violates the 4th article of the amendments of the Constitution. Says that article, "The right of the people to be secure in their houses, papers and *effects*, against unreasonable searches and seizures, shall not be violated. That vessels are *effects*, equally with houses, or other immovable property, will not be disputed.

That a search of a vessel, in furtherance of, and for the sustenance of a system at which the world revolts, however legal it may be in Virginia, under the circumstances which we have set forth, and in violation of those great constitutional rights, of which we so much boast, that such a search is *unreasonable*, is too plain to require argument.

Again: This statute is in violation of the Federal Constitution, as the Supreme Court of the United States have decided, in the case above cited—7 Howard, 384. In that case, the New York statute appropriated a part of the proceeds of the passenger tax then levied, "to the use of a school for the reformation of juvenile offenders." This appropriation, independently of the other provisions of that Act, the court declared unconstitutional and void.

Commerce could never be taxed to support State institutions, or State laws, directly or indirectly.

The Virginia law appropriates some of the proceeds of the tax on vessels, as follows:—The fines and forfeitures go to “constitute a fund to be called a Fugitive Slave Fund, and to be used for the payment of rewards, awarded by the governor, for the apprehension of runaway slaves.” This is the language of the Act. To say nothing of the revolting purposes to which the proceeds of the tax are applied, they are clearly within the decision of the court cited above. It is a parallel case, and must, therefore, according to that decision, be void and unconstitutional.

And finally, in regard to the Constitution: The 2d section of article 4 provides that, “The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.”

Under this law it is a privilege, and an immunity, of all the citizens of Virginia, and the States South of the Capes, to be exempt from tribute in the waters of Virginia. They pay no tax, nor are subject to any inspection if bound south of the Capes.

The citizens of the States north of those Capes, pay \$137,000 annually to Virginia, to support their fugitive slave laws, in part or whole, and are subject to a most odious search, and are liable at any moment to seizure and confiscation. These are not equal privileges and immunities. The immunities and privileges are all on the side of the States south of the Virginia Capes.

Such are the constitutional provisions, and such the decisions of the highest authority of the land. We have evidence before us that high authorities of our own Commonwealth concur in these opinions. High authorities of this State have been consulted by the petitioner, and have expressed their opinion of the unconstitutionality of the statute.

We have seen that eminent counsel in Virginia, certainly not the most inclined to favor an opinion adverse to the statute, believe that the Act would not survive the ordeal of a Virginia Court of Appeals.

Bad as the Act is in principle, its workings in practice are worse. We have seen that Captain Baker offered sureties for

the payment of his fine and costs, with a view of contesting the constitutionality of the law, but no one would bond the vessel within three months. He procured sureties for the purpose of bonding his vessel, but there were no courts or officers who could accept his bond. He was ready to comply with all provisions of the Act to release his vessel, but no measures were provided in the Act by which he could contest his right in the State courts by appeal. No court sat within nearly three months, and in the meantime his vessel, chained to the wharf, was destroyed by the worms, and rendered almost valueless. His legal means of redress were in fact cut off, and no resource was left him but to abandon his vessel. The pilots might as well have sold her on the day of her seizure, as far as any means of redress were concerned. They were of no avail in his case, and would not be in any similar case which may hereafter arise.

The Committee have therefore come to the conclusion, unanimously, that this case is one which concerns the whole Commonwealth, and one on which Massachusetts should take legislative action. It is not a case between an humble citizen of Yarmouth, and the great State of Virginia. Massachusetts would evade her duty, we believe, if she left a single citizen to contest, at his own expense, a great commercial and constitutional question, in which the rights of hundreds of her shipowners and merchants are directly, and thousands of her other citizens are indirectly interested.

It is due to the dignity and to the sense of duty of one of the first commercial States of the Union, that she should step into the breach, in a contest where one citizen contends with an adverse and oppressive Act of a great sovereignty, in behalf of one of the great interests on which her prosperity is based.

It is a question to be settled finally for the whole nation, and the whole commercial interest, by a national tribunal, provided by the wisdom of the founders of the federal government, expressly to decide between conflicting laws of the different States of the confederacy. It is in this great judicial arena that States are parties, the representatives of interests which affect the welfare of vast numbers of citizens.

The burden of such a contest should not be borne by an individual. The State should protect her citizens in their rights

under the Constitution and laws, by contesting their rights in the federal courts, as she would protect them from aggression or seizure in their own homes, and on their own soil. Shall Virginia tax the commerce of Massachusetts to any amount, and for any time? That is the question involved in this case.

This is but the last of a long series of aggressions, arising out of a vindictive spirit, which has characterized the legislation of the slaveholding States, in the few past years.

The outrages upon mails in 1832—the laws imprisoning colored seamen, citizens of the free States, in the ports of South Carolina, Alabama and Louisiana—the compulsory levy of fines and jail fees, for such imprisonment—the sale into slavery of such citizens, for failure to pay such fees,—instances of which have occurred—the expulsion of free citizens of northern States from their soil, on suspicion only, of opinions adverse to the system of slavery—the mobbing of the agent of Massachusetts, sent to Charleston to prosecute legally, before the federal tribunals, the question of the privileges of citizens of one State in another State; these infractions of States upon the rights of our citizens are fresh in the minds of all; they are matters of every day history.

We say nothing of Kansas outrages, or of the recent decision of the Supreme Court in the Dred Scott case, so fatal to many of our most sacred rights; more than that they bring home to Massachusetts the pressing necessity of contesting to the last, in the proper places, and by the means which our National and State constitutions and laws place in our hands, every inch of ground which lies between these vindictive sectional aggressions and our National and State rights. Let the history of five years past say if the Commonwealth has not exhibited a romantic loyalty and fidelity to the Union. She is equally loyal to the Union to-day; and it is in no spirit of hostility that we recommend that she now contest in the courts the Union has provided for this purpose, the rights which the government of that Union gives to all its citizens.

If we would have our rights respected by other States, we must insist upon them ourselves. It is in the nature of the system out of which these aggressions have arisen, to respect no rights which interfere with or impede its perpetuity or extension.

Against these aggressions we have now the duty cast upon us of resistance, not by violence, but by the means provided by the laws and constitutions of our common country.

We therefore unanimously recommend the passage of the accompanying Resolve.

For the Committee,

DANIEL U. JOHNSON.

BENJAMIN C. CLARK,
JOHN W. ATWOOD,
Committee of the Senate.

DANIEL U. JOHNSON,
ZADOK CROWELL,
CHARLES FIELD,
THOMAS H. SOULE,
CHARLES FURBER,
Committee of the House.

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Fifty-Seven.

RESOLVE

On the Petition of Levi Baker and others.

Resolved, That the sum of twenty-five hundred dollars be, and hereby is, appropriated from the treasury of the Commonwealth, to enable Levi Baker, of Yarmouth, to test before the Supreme Court of the United States the constitutionality of an Act of the legislature of the State of Virginia, passed March seventeenth, eighteen hundred and fifty-six, entitled, "An Act providing additional protection for the Slave Property of Citizens."

The said appropriation shall be paid out in such sums, and at such times, as the expenses incurred by said Levi Baker for competent counsel and other incidental expenses and costs, shall, in the judgment of the attorney-general be proper and expedient, and it shall be the duty of the attorney-general to furnish, on application therefor, his certificate for such amounts, to the governor, and the governor is hereby authorized to draw warrants therefor accordingly.

